IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION 54/1999

Mr. Sharad Prabhudas,
Sapana Garden, Flat No.B-5,
Chogm Road, Socorro, Porvorim, Goa. ..... Petitioner.

V/s

1. The Chief Secretary,
   Govt. of Goa,
   Secretariat, Panaji, Goa.

2. The Village Panchayat of Socorro,
   through its Secretary, having its
   Office at Socorro Village,
   Porvorim, Bardez, Goa.

3. The Chief Town Planner,
   Town & Country Planning Department,
   Old G.M.C. Building,
   Govt. of Goa, Panaji, Goa.

4. The Senior Town Planner,
   Town & Country Planning Department,
   Mapusa, Bardez, Goa.

5. The Deputy Director of Panchayats
   (North) Directorate of Panchayats,
   Junta House, Panaji, Goa.

6. M/s. Sapana Real Estates,
   A registered partnership Firm
   with its Office at Nanu House,
   Varde Valaulicar Road,
   Margao, Goa.

7. Shri Sandesh Krishna Naik,
   Partner of M/s. Sapana Real Estate,
   Nanu House, Varde Valaulicar Road,
   Margao, Goa.

8. The Chief Engineer,
   Department of Electricity,
   Govt. of Goa, Panaji, Goa.

9. Mr. Agnelo Lobo, Ex-Sarpanch,

Socorro Village Panchayat,
Porvorim, Goa.

10.Dy. Collector, North Goa,
Mapusa, Bardez, Goa.

11.The Chairman,
Sapana Garden Co-operative Housing
Society, Socorro Village,
Porvorim, Bardez, Goa.

12.The Director of Panchayats,
Directorate of Panchayats,

13.The Assistant Engineer, P.W.D.,
Sub-Div. III, W.D. - V (B-N),
Mapusa, Bardez, Goa.

14.The Sarpanch,
Village Panchayat of Socorro,
Socorro, Bardez, Goa.

15.The Secretary Panchayats,
Govt. of Goa,
Secretariat, Panaji, Goa. ..... Respondents.

The petitioner in person.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for respondents No. 1, 3 to 5, 8 and 10.

Mr. P.A. Kholkar, Advocate for respondent No.2 and 14.

Mr. Sudin M.S. Usgaonkar, Advocate for respondents No.6 and 7.

Mr. M.S. Sonak, Advocate for respondent No.11.

CORAM : P.V. HARDAS &
D.G. KARNIK, JJ.

DATE OF RESERVING THE JUDGMENT :
APRIL 21, 2004.

DATE OF PRONOUNCING THE JUDGMENT:
May 6, 2004.

J U D G M E N T : (Per KARNIK, J.)

1. By this petition, purportedly filed in the public interest, the petitioner seeks writ of mandamus or any other appropriate writ, order or direction to demolish the construction allegedly carried out illegally by respondents No.6 and 7 on part of the land bearing Sub-Division 3 of Survey No.382 of Village Socorro, Porvorim, cancellation of the occupancy certificate in respect of certain buildings constructed on the said land, cancellation of the building permissions and injunction restraining respondents No.6 and 7 - developers and the Chairman of the Co-operative Society of the purchasers of the flats from creating third party rights by sale, mortgage or transfer of shares in respect of the flats in the unauthorised buildings and other reliefs.

2. The basic facts, so far as necessary for the decision on the limited grounds on which the petition is being decided, are stated below :

On 8th July, 1997, on application of the owners, the Collector of Goa, in exercise of the powers conferred on him under Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968, granted permission for conversion of the use of the land to the extent of 13,600 sq. metres, out of Survey No.382/3 of Village Socorro, Taluka Bardez (hereinafter, referred to as "the said land") with the consent of the owners, respondents No.6 and 7 promoted a scheme known as "Sapana Garden" on the said land for construction and sale on ownership basis flats and apartments. By an Agreement dated 2nd August, 1995 the petitioner agreed to purchase a flat in

the said scheme from respondents No.6 and 7 and is residing in the said flat bearing number B-5. A co-operative housing society of the flat-holders in the said scheme was formed and respondent No.11 is the chairman of the said Society. It is alleged that on account of disputes between the petitioner and the respondent Nos. 6 and 7, the petitioner is not being admitted as a Member of respondent No.11-Society. It appears that the provisions of Goa Town and Country Planning Act, 1974 ("the Goa Town Planning Act" for short) were made applicable to the Porvorim area and the planning authority was also appointed. A plan for development of the area was prepared and the Notification under Section 37 of the Goa Town Planning Act was issued on 11th January, 1990. On 7th February, 1991, a building permission was granted for construction of the buildings on the said land. A revised permission for construction of the buildings was granted on 25th October, 1994. According to the petitioner, National Highway No.17 passes from near the said land and a bye-pass to it was proposed to pass from a part of the said land. Some of the buildings in Sapana Garden are affected by the said bye-pass and construction of those buildings is impermissible. However, the buildings which are affected by the proposed bye-pass are being illegally constructed by respondents No.6 and 7, contrary to the development plan and illegal. According to the petitioner, the Authorities are illegally allowing the respondents No.6 and 7 to carry out the construction contrary to the development plan on the land affected by the proposed bye-pass under the development plan sanctioned on 11th January, 1990. The petitioner claims to have filed this petition, in public interest, preventing construction of the building on the part of the land which is affected by the proposed bye-pass

under the development plan.

3. Learned Advocate General appearing on behalf of the respondents No.1, 3 and 5, 8 and 10 invited our attention to the Notification dated 23rd June, 1993 issued by the Government of Goa, under sub-Section (1) of Section 19 of the Goa Town Planning Act withdrawing the whole of the planning areas declared under various notifications since 1976 from the operation of the Goa Town Planning Act. Sub-Section (1) of Section 19 of the Goa Town Planning Act, reads as under :

> "(1) The Government may, if it is of opinion that it is necessary so to do in the public interest by notification, withdraw from the operation of this Act the whole or part of any planning area. "

Section 19 (1) of the Goa Town Planning Act enables the Government to withdraw from the operation of the Act the whole or part of any planning area. The notification dated 23rd June, 1993 issued in the public interest withdraws from the operation of the Goa Town Planning Act, the whole of the planning areas declared under the various Notifications, including the area in which the said land is situated. As the very application of the Goa Town Planning Act has been withdrawn, the development plan prepared under that Act, in respect of the area in which the said land is situated, no longer survives. Therefore, the grievance of the petitioner that the buildings which are being constructed in the said land after 23rd June, 1993 contrary to the development plan, does not survive. The petition is, therefore, liable to be dismissed on this short ground alone.

4. The petitioner submitted before us that after the withdrawal of the area in which the said land is situated from the operation of the Goa Town Planning Act, the Government of Goa has subsequently issued another notification again making the Goa Town Planning Act applicable to the said area. The petitioner made an oral request for permission to amend the petition to bring on record the subsequent notification, we have declined the oral request, because, in our opinion, subsequent application of the Act to the area would not revive the old development plan. The initial development plan which was made applicable by the Notification dated 11th January, 1990 lapsed by issuance of notification under sub-Section (1) of Section 19 of the Goa Town Planning Act withdrawing the said area from the operation of the Act on 23rd June, 1993. On issuance of a fresh notification making the Goa Town Planning Act applicable, the planning authority would be required to prepare a fresh plan in accordance with the Act. The development plan which lapsed on 23.6.1993 would not ipso facto revive on the Act being made applicable again by a fresh notification.

5. There is one more reason why the petitioner is not entitled to any relief in this petition. The petitioner claims to have filed the present petition in public interest and not in vindication of his private grievance. He claims that public is interested in a planned development of the area and against construction of the buildings contrary to the development plan, prepared in accordance with the Goa Town Planning Act. This is in public interest. The petitioner claims that as a resident of the locality he has a right to

ensure a planned development which is the purpose of the Goa Town Planning Act. In paras 1 and 2 of the petition, the petitioner has stated that he is Portuguese National of Indian Origin and he is residing in India and is registered with the Police in the Foreigner's Branch under No.RC-39/96 PORT. Even as a foreigner, the petitioner has a fundamental right to life and liberty under Article 21 of the Constitution of India, but not the rights conferred under Article 19(1)(e) of the Constitution. Right conferred under Article 19(1)(e) is available only to the citizens of this country. The petitioner essentially is residing in Indian on a limited visa and has no right to permanently reside in India. In ***Louis De Raedt, v. Union of India and others, A*****IR 1991 SC 1186,** relied upon by the learned Advocate General, the Supreme Court held that the fundamental right of a foreigner is confined to life and liberty under Article 21 and does not include the right to reside and settle in this country as mentioned in Article 19(1)(e) which is applicable only to the citizens of this country. The citizens of this country residing in a locality may be interested in a planned development of a locality in conformity with the development plan framed under the relevant Town Planning Act. If a citizen residing in the locality takes up a cause, in a public interest, of any infraction of a planned development which is not in accordance with the development plan, the petition may be maintainable. The petitioner in the present case has no where alleged that the present residents of locality are unable to approach this Court for protection of their right of a planned development in accordance with the development plan and, therefore, he is filing the petition. If such an averment was made in the petition, we may have been required to consider whether a foreigner can file

a petition in the public interest on their behalf. In the present case, the residents of the locality appear to be the purchasers of posh flats and certainly the persons of affluence who can afford to approach the Court. The petitioner is not espousing the cause of the downtrodden or the persons who, for the reason of poverty, ignorance or illiteracy, unable to approach the Court.

6. On the other hand, the present petition is not a public interest litigation, but appears to have been filed by the petitioner to further his private interest or resolve the private disputes. The petitioner has purchased/agreed to purchase a flat in the scheme known as "Sapana Garden". There are some disputes between the petitioner and the promoters of the scheme. Despite the petitioner having agreed to purchase a flat in the scheme, the petitioner has not been admitted as a member of a co-operative housing society of the flat holders. In para 6 of the petition, the petitioner has himself stated, "The Respondent No.6 has been instrumental in preventing the Petitioner from being admitted as a member of the Co-operative Society of the project, namely Respondent No.11, with ulterior motives." The petitioner appears to be seeking redressal of his private disputes and grievances in the name of public interest. In ***Ashok Kumar Pandey v. State of West Bengal and ors, AIR 2004 SC 280,*** the Apex Court has cautioned against the use of public interest litigation for private or collateral purposes. In para 12, it observed that:

> " Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful

> veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations."

As we see, the petitioner is not acting in the genuine public interest, but for collateral reasons.

7. The petition is accordingly, dismissed. Rule discharged. The petitioner shall pay costs of the respondents.

P.V. HARDAS, J.

D.G. KARNIK, J.

ssm.